

---

IN THE  
SUPREME COURT AND COURT OF APPEALS  
STATE OF MISSISSIPPI

---

No.: 2014-TS-00585

---

STEVEN JACOB MAHAFFEY

APPELLANT

v.

WILLIAM CAREY UNIVERSITY

APPELLEE

---

APPEAL FROM THE CHANCERY COURT OF FORREST COUNTY, MISSISSIPPI

---

**APPELLANT'S BRIEF**

---

**Oral Argument is Requested**

JOYCE FREELAND    MBN 102183  
T.H. FREELAND, IV    MBN 5527  
FREELAND & FREELAND, LAWYERS  
1013 JACKSON AVE  
P.O. Box 269  
OXFORD, MS 38655  
(662) 234-3414

ATTORNEYS FOR THE APPELLANT

**CERTIFICATE OF INTERESTED PERSONS**

Steven Jacob Mahaffey vs. William Carey University  
No.: 2014-TS-00585

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the judges may evaluate possible disqualification or recusal:

Steven Jacob Mahaffey

William Carey University

Heber Simmons, III, Esq.

Dorrance Aultman, Esq.

Seth Hall, Esq.

**s/T.H. Freeland, IV**

T.H. Freeland, IV

Attorney of Record for Steven Jacob Mahaffey

## TABLE OF CONTENTS

	Page
CERTIFICATE OF INTERESTED PERSONS.....	i
TABLE OF CONTENTS .....	ii
TABLE OF AUTHORITIES.....	iii
I. ISSUES.....	1
II. COURSE OF PROCEEDINGS BELOW.....	2
III. STATEMENT OF FACTS.....	3
IV. SUMMARY OF THE ARGUMENT .....	6
V. ARGUMENT.....	7
A. Because there is at least one disputed issue of fact that is material to the medical school's dismissal decision, the granting of the Motion for Summary Judgment by William Carey University should be reversed.....	7
B. Where one party provides one version of the facts and the other party says the opposite, summary judgment should be denied. ....	11
C. The Chancellor erred in applying the legal standard for judicial review of decisions by private educational institutions by <u>not</u> considering whether William Carey University (i) followed the applicable procedures in its handbook; (ii) deviated from its standard procedures in dealing with Mr. Mahaffey; and (iii) demonstrated an intent to "send him home" regardless of "fundamental fairness." .....	13
D. The legal standard for judicial review of decisions by private educational institutions as explained in the Beauchene case (i) provides for less deference and closer scrutiny if Mr. Mahaffey's dismissal was based on professionalism rather than academic grounds; (ii) would require that the University follow its standard procedures for review and appeal of Mr. Mahaffey's failing grade if the dismissal is based on academic grounds; and (iii) does not, in either case, hold that "informal give and take" is sufficient in this situation .....	14
CONCLUSION .....	16
CERTIFICATE OF SERVICE.....	18

## TABLE OF AUTHORITIES

### Page

#### Cases

<b><u>BancorpSouth Bank v. Brantley</u></b> , 2011-CT-00475-SCT (¶21) (Miss. 2014).....	6, 7, 8
<b><u>Beauchene v. Mississippi College</u></b> , 986 F.Supp.2d 755 (S.D. Miss. 2013).....	12, 14, 15
<b><u>Ellis v. Powe</u></b> , 645 So.2d 947 (Miss. 1994) .....	12
<b><u>Evans v. Stephens</u></b> , 407 F.3d 1272 (11 <sup>th</sup> Cir. 2005) .....	11
<b><u>Mantachie Natural Gas Dist. v. Mississippi Valley Gas Co.</u></b> , 594 So. 2d 1170 (Miss. 1992) .....	12
<b><u>Monsanto Co. v. Hall</u></b> , 912 So.2d 134 (Miss. 2005).....	7
<b><u>Olier v. Bailey</u></b> , 2013-CA-01411-SCT (¶8) (Miss. 2014) .....	6, 8
<b><u>Todd v. First Baptist Church of West Point</u></b> , 993 So.2d 827 (Miss. 2008) .....	12
<b><u>University of Mississippi Medical Center v. Hughes</u></b> , 765 So.2d 528 (Miss. 2000) .....	6, 13, 15

#### Rules

Miss. R. Civ. P. 56.....	6, 7, 11
--------------------------	----------

## **I. ISSUES**

1. Did the Chancellor err in determining that no genuine issue of material fact existed and in granting William Carey University's Motion for Summary Judgment?
2. Did the Chancellor err in granting summary judgment to William Carey University by not giving every benefit of the doubt on each disputed issue of fact to Steven Jacob Mahaffey, the non-movant, as required under Rule 56 of the Mississippi Rules of Civil Procedure?
3. Did the Chancellor misinterpret and misapply the well-accepted standard of review for a disciplinary dismissal for "unprofessional" conduct by a private educational institution in not considering whether William Carey University deviated from its established procedures in its dealings with Mr. Mahaffey?
4. Did the Chancellor err in holding that William Carey University was not required to follow its handbook in dismissing Mr. Mahaffey so long as there was "informal give and take between the student and the administrative body which dismisses him"?
5. Did the Chancellor err in holding that such "informal give and take" meets the standard for "fundamental fairness" rather than constituting "arbitrary and capricious" action by the University where every ground cited by the University for dismissal is highly disputed in the record before the Court?
6. Did the Chancellor err in applying the more deferential standard for judicial review of academic standards decisions to a dismissal decision that the University ultimately characterized as a dismissal for unprofessional behavior?
7. Did the Chancellor err in not considering whether the University's initially citing academic failure of Mr. Mahaffey's pediatrics rotation as grounds for dismissal required the University to follow its standard procedures allowing him to appeal or

replace the failing grade, with three failing grades being required for dismissal under the University's handbook, policies, and procedures?

## **II. COURSE OF PROCEEDINGS BELOW**

This case involves the expulsion of a third year medical student by the osteopathic school of medicine at William Carey University, see July 1, 2013, letter from Dean James Turner (R000109, Record Excerpts Tab 11), based on a “pattern of unprofessional conduct.”

On August 28, 2013, Steven Jacob Mahaffey filed a lawsuit in Forrest County Chancery Court challenging the expulsion as a breach of contract by the University and asking for injunctive relief (R000005). On March 3, 2014, William Carey University filed a Motion for Summary Judgment (R000111-R000204), which was argued on March 21, 2014 (see Transcript included in the Record).

After hearing argument, the Chancellor granted summary judgment to the University based on reasoning announced from the bench after a short break (Transcript at 44-56, Record Excerpts Tab 3). The Chancellor used an extremely deferential standard of review, referring to the University as having “considerable discretion” in deciding to dismiss Mr. Mahaffey. *Id.* He held that the University had met its obligations under its implied contractual relationship with this medical student, because there had been an “informal give and take” between the administration and Mr. Mahaffey prior to his dismissal. *Id.* The Chancellor did not consider it relevant whether there was any deviation from procedures required under the University's handbook or otherwise under the University's contractual obligation of “fundamental fairness.” *Id.*

An Order reflecting the Chancellor's ruling from the bench was entered on March 25, 2014 (R000943-R000944, Record Excerpts Tab 2). A Notice of Appeal was filed by the medical student on April 24, 2014, initiating this appeal.

### **III. STATEMENT OF FACTS**

In September 2009, William Carey University obtained provisional accreditation for the second medical school in the State of Mississippi, a school of osteopathic medicine. Steven Jacob Mahaffey started medical school at William Carey University in August 2010 in the first class of medical students (R000005).

Mr. Mahaffey's expulsion was based on (1) several relatively insignificant instances that the faculty deemed "unprofessional" after the student's first year of medical school (asking the school-approved vendor of electronic textbooks for a credit for books already in the student's library and communications about setting up rotations)(R000242-R000243); (2) one incident in 2011 concerning a request to scrub for surgery where the surgeon involved has supplied an affidavit completely refuting the description of the nurse who complained (R000626-R000627, Record Excerpts Tab 4); (3) the university's taking the position that the student was, as a result, on a "zero tolerance" probation for unprofessional conduct (R000249-000251), although that concept does not appear in the formal probation letter discussed below; (4) a few unrelated, non-academic issues (parking once in the wrong area at orientation, allegedly asking too many questions of the personnel in charge of the Boards Boot Camp program despite being encouraged to ask questions)(R000261 and R000628-000630, Records Excerpt Tab 7); and (5) a dispute three years later concerning a failing grade and accuracy of the student's logs for his pediatrics rotation (despite strong grades in four other rotations) (R000748).

On February 16, 2012, the Promotion and Matriculation Committee of the medical school (the “P&M Committee”) sent a letter to Mr. Mahaffey outlining the terms of his probation for the instances of conduct deemed unprofessional -- contacting the book vendor, communications concerning rotations, and the alleged incident before surgery (R 000076, Records Excerpt Tab 6) (the “Probation Letter”).

The Probation Letter includes the following as express conditions of Mr. Mahaffey’s probation: (1) he was to see a counselor chosen by the medical school who would report back to the administration concerning issues of “authority” and “working within the medical team environment”; (2) Dean Turner would handle all of Mr. Mahaffey’s rotations; (3) any “concerns regarding any vendor, hospital, doctor’s office, . . . or other entity” regarding the medical student’s education or the medical school were to be addressed to Dean Turner; and (4) Mahaffey would meet with Dr. Jim Weir and later with Dean Turner monthly, either in person or telephonically (R000076, Records Excerpts Tab 6).

The Record includes evidence that Mr. Mahaffey was in full compliance with the conditions of the Probation Letter (R000863, R000864, R000865, R000942, and R000236, e-mails and deposition testimony concerning communications through Dr. Turner about rotations and meetings with Dr. Turner).

Over a year later, as reflected in minutes of a meeting on April 17, 2013, and a subsequent e-mail, the P&M Committee voted to expel Mr. Mahaffey based on (1) repeated acts of unprofessional behavior; and (2) failing his pediatrics rotation (R000836-000838, Records Excerpt Tab 8). No complaint concerning new issues was used despite that being a requirement under the University handbook (R000739-R000740); Mr. Mahaffey was not present or allowed to respond, and the committee voted unanimously, with the minutes not indicating any discussion among its members. *Id.*



The minutes do reflect, however, that the committee members had received an e-mail from Dr. Chard, the preceptor for Mr. Mahaffey's pediatrics rotation, a physician in private practice in Laurel, Mississippi, who believed his logs were inaccurate or falsified and had given him a failing grade. *Id.*

Failure of the pediatrics rotation was not grounds for dismissal as an academic matter under William Carey University's handbook and policies (R000642 and R000744).

Mr. Mahaffey was initially told in a May 16, 2013, letter from Dean Turner notifying him of his dismissal from medical school that he would not be given an opportunity to appeal and that his dismissal was based on unprofessional conduct and failing the pediatrics rotations (R000077, Records Excerpts Tab 9).

Both of those positions were later changed by the University. On May 23, 2013, the administration decided to allow an appeal of the P&M Committee's decision to Dean Turner (R000078, Records Excerpts Tab 10), and a subsequent appeal was allowed of the committee's decision to the President of William Carey University (R000110). Mr. Mahaffey was allowed to be present at the appeal to the Dean but not during the appeal to the President; he did not have an opportunity to present testimony of witnesses at the P&M Committee meeting or at either appeal.

Mr. Mahaffey complained that the procedure used by the P&M Committee in dismissing him did not follow the handbook and that the appeal to the Dean, who had already signed a letter dismissing him, was unlikely to be fair (R000777).

In the July 1, 2013, letter notifying Mr. Mahaffey of the adverse results of the first step of the appeal, the Dean of the medical school described the appeal as affirming Mr. Mahaffey's expulsion, but that it was based solely on "unprofessional conduct."

(R000109, Records Excerpts Tab 11). The letter from the President finds no egregious errors in the decision to dismiss, without mentioning the grounds for dismissal (R000110).

#### IV. SUMMARY OF THE ARGUMENT

Rule 56 of the Mississippi Rules of Civil Procedure is extremely clear – in considering a summary judgment motion, every disputed fact must be considered “in the light most favorable” to the non-movant, the medical student, Steven Jacob Mahaffey. **See, e.g., Olier v. Bailey**, 2013-CA-01411-SCT (¶8) (Miss. 2014).

If there is doubt as to the existence of any genuine issue of material fact (to provide one example, the effect of the University’s wholly inadequate coding system on the accuracy of Mr. Mahaffey’s pediatric logs), summary judgment should be denied and the case should proceed to trial. (A more extensive list of genuine issues of material fact present in this case is set out in the argument section below).

Whether summary judgment is appropriate here is a matter to be decided de novo by this Court. **See, e.g., BancorpSouth Bank v. Brantley**, 2011-CT-00475-SCT (¶21) (Miss. 2014).

In addition, the Chancellor erred in applying the standard for judicial review of a dismissal of a student from a private school to the present situation. He correctly noted that the standard of review under Mississippi law is set out in **Beauchene v. Mississippi College**, 986 F.Supp.2d 755 (S.D. Miss. 2013) and **University of Mississippi Medical Center v. Hughes**, 765 So.2d 528 (Miss. 2000).

In applying **Beauchene**, however, the Chancellor (1) failed to consider the handbook and policy statements by the University as part of the implied contractual relationship between the student and the private university; (2) also failed to consider the extent to which the University deviated from its standard procedures in dealing with

Mr. Mahaffey; and (3) held, in error, that “informal give and take” between the student and the administration dismissing him is sufficient to support dismissal here.

This approach misinterpreted and misapplied the legal standard for judicial review set out in **Beauchene** and, separately from the misapplication of the standard for summary judgment, requires reversal and remand in this case.

## V. **ARGUMENT**

### A. **Because there is at least one disputed issue of fact that is material to the medical school’s dismissal decision, the granting of the Motion for Summary Judgment by William Carey University should be reversed.**

---

Whether summary judgment is appropriate here is a matter to be decided de novo by this Court. **See, e.g., BancorpSouth Bank v. Brantley**, 2011-CT-00475-SCT (¶ 21) (Miss. 2014) .

Rule 56 of the Mississippi Rules of Civil Procedure is controlling here, and its application is extremely clear.

Miss. R. Civ. P. 56(c) provides that summary judgment “shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, shows that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” [emphasis supplied]

William Carey University, as the movant, “carries the burden of demonstrating that no genuine issue of material fact exists, and the non-moving party is given the benefit of the doubt as to the existence of a material fact.” **Monsanto Co. v. Hall**, 912 So.2d 134, 136 (Miss. 2005).

It is well-established that in reviewing the trial court’s grant of summary judgment, this Court should “view the evidence ‘in the light most favorable to the party against whom

the motion is made,’ ” in this case in favor of the medical student, Steven Jacob Mahaffey. **BancorpSouth Bank v. Brantley**, 2011-CT-00475-SCT (¶ 21) . **Accord Olier v. Bailey**, 2013-CA-01411-SCT (¶8) (Miss. 2014).

The Record confirms the existence of doubts and disputes concerning the following facts that are clearly material:

- Whether the nurse’s description of the consequences of an incident when Mr. Mahaffey asked to scrub for surgery after his first year was refuted by the affidavit of the surgeon involved, confirming that the nurse was wrong, that the surgical field was not contaminated by Mr. Mahaffey, and that neither the surgeon or others involved in the procedure had to re-scrub (R000626-R000627, Record Excerpts Tab 4).
- Whether Mr. Mahaffey was fully in compliance with the express conditions of his probation, going to professional counseling sessions on “authority” issues and “teamwork,” sending all inquiries concerning setting up rotations through the Dean, and meeting regularly with Dr. Weir and the Dean (see Probation Letter, Records Excerpt Tab 6, and R000619, R000863, R000864, R000865, R000942, and R000236).
- Whether the P&M Committee members describing Mr. Mahaffey’s probation as “zero tolerance” could mean, consistent with the legal requirement of “fundamental fairness,” that he could be expelled for different reasons other than those listed in the probation letter, including academic issues, without following procedures set out in the University’s handbook and given by policy to other students (R000941-R000942, Mahaffey Deposition at 74-75).

- Whether one doctor on the Boards Boot Camp staff encouraged Mr. Mahaffey (in an e-mail the student provided to the medical school) to ask questions since that is the service the staff provided (R 000628-000630, Records Excerpt Tab 7).
- Whether the incident concerning parking once at the back of the general parking lot at orientation at Forrest General Hospital was understandable and rectified or whether it warrants expulsion of a third year medical student (Transcript at 32).
- Whether a call by Mr. Mahaffey to the counseling center using his first name was intended to change the assignment of the counselor chosen by medical school administration for him or merely how he typically sets up appointments based on his medical records being maintained under his full, legal name (Transcript at 33).
- Whether Mr. Mahaffey seeing an additional counselor while still having counseling sessions with the professional chosen by the medical school administrators, with the results reported to them, would constitute a breach of the conditions of his probation (R000076, Record Excerpts Tab 6).
- Whether Mr. Mahaffey used Facebook and sent texts during orientation or, as explained by him, did not have Facebook access set up on his phone, responded to texts during breaks, and was taking notes on his phone (R000258).
- Whether administration of the medical school demonstrated a determination for years that “it is time for Jacob to go home” regardless of the requirements of “fundamental fairness,” regardless of the procedures provided for in the University’s handbook and policies, and despite the fact that there were explanations of each incident of supposedly “unprofessional” conduct on his part (R000614, Record Excerpts Tab 5, e-mail from Dean Turner).

- Whether the inadequacy of the University's relatively primitive coding system (E-Value used by practicing physicians acting as preceptors to monitor William Carey medical students doing rotations) which had only a hundred or so potential codes for procedures (in contrast to the 10,000 potential codes for procedures in the systems like Epic or CERNER used by practicing physicians, like Dr. Chard, at hospitals like South Central) and which made it difficult to identify the age of a patient accurately affected the accuracy of Mr. Mahaffey's pediatric logs (Transcript at 28, R000625 and R000684-R000691).
- Whether Dr. Longenecker failed, in doing her review of Mr. Mahaffey's pediatric logs, to understand the issues affecting them and to allow Mr. Mahaffey an opportunity to appeal the grade assigned by Dr. Chard in contrast to the grades he received in other rotations (R000424-R000426 and R000748 confirming overall grades of 87% to 90% in other rotations).
- Whether the concession by Dean Turner in his deposition that under the University handbook and policy, there is an argument that Mr. Mahaffey should have received full credit for completion of his pediatric logs (R000671-R000672), means that the P&M Committee's taking into account any suggestion by Dr. Chard that the logs were inaccurate or "falsified" was improper.
- Whether the University's initially citing both professionalism and the failing grade for Mr. Mahaffey's pediatrics rotation as the basis for his dismissal (Record Excerpts Tabs 8, 9, and 10), denying a right to an appeal, then granting a right to an appeal with no opportunity for the student to effectively provide evidence from others confirms a marked deviation from (a) the conditions in the Probation Letter; (b) the procedures in the University handbook; and (c) the University's policy that a student

can retake a course with a failing grade, with dismissal only being recommended after three or more failed grades (R000744 and R000642).

- Whether, in context, the actions by the P&M Committee and the Dean “deviated from the standard procedures” in the handbook and University policies for other students, failed to ensure “fundamental fairness” for this medical student, and were “arbitrary and capricious.”
- Whether, with the nurse’s claim that Mr. Mahaffey’s actions at the surgical center caused the surgeon to re-scrub and Dr. Chard’s conclusion on cursory examination that his pediatrics logs were “inaccurate” or “falsified” being fully refuted by others and/or waived by the University, Mr. Mahaffey has been expelled from medical school for insignificant issues – asking too many questions of vendors, parking once in the wrong spot, and allegedly texting during an orientation session – in a way that is “arbitrary and capricious” (R000838, Record Excerpts Tab 8).

If there is doubt on even one of these disputed issues, each of which is material to whether Mr. Mahaffey should be expelled or allowed to complete his study of medicine, summary judgment should be denied. See Miss. R. Civ. Pro. 56(c).

**B. Where one party provides one version of the facts and the other party says the opposite, summary judgment should be denied.**

---

The parties here have provided diametrically opposite versions of virtually every fact cited as grounds for William Carey University’s dismissal of this third year medical student. When conflicts arise between the versions of the facts presented by the parties, the Court, on summary judgment, “credits the nonmoving party’s version.” See, e.g., Evans v. Stephens, 407 F.3d 1272 (11<sup>th</sup> Cir. 2005).

The Chancellor in considering a motion for summary judgment cannot “pick and choose” between “essentially incompatible accounts,” but instead must deem the nonmovant’s version, here Mr. Mahaffey’s view of events, as true. *Id.*

As explained in Mississippi precedent on the standard for summary judgment: “Issues of fact sufficient to require denial of a motion for summary judgment obviously are present where one party swears to one version of the matter in issue and another says the opposite.” **Mantachie Natural Gas Dist. v. Mississippi Valley Gas Co.**, 594 So. 2d 1170, 1172 (Miss. 1992).

As indicated by counsel for William Carey University in oral argument, this situation has been irritating for the faculty of the new medical school, because they had found in their dealings with Mr. Mahaffey that: “There is always an explanation” (Transcript 37).

With an extensive record before the Court that shows that there was “always an explanation” by Mr. Mahaffey for each matter raised by the medical school as grounds for dismissal, summary judgment should be denied, and this matter should be remanded for trial.

Again, as explained by Mississippi cases on the standard for summary judgment: “Where doubt exists as to whether there is a genuine issue of material fact, the trial judge should err on the side of denying the motion and permitting a full trial on the merits.” **Ellis v. Powe**, 645 So.2d 947, 950 (Miss. 1994). **Accord Todd v. First Baptist Church of West Point**, 993 So.2d 827, 829 (Miss. 2008).



- C. The Chancellor erred in applying the legal standard for judicial review of decisions by private educational institutions by not considering whether William Carey University (i) followed the applicable procedures in its handbook; (ii) deviated from its standard procedures in dealing with Mr. Mahaffey; and (iii) demonstrated an intent to “send him home” regardless of “fundamental fairness.”
- 

The Chancellor correctly noted that the most important decisions in this area are Beauchene v. Mississippi College, 986 F.Supp.2d 755 (S.D. Miss. 2013), which involved academic dismissal of a student from a private law school, and University of Mississippi Medical Center v. Hughes, 765 So.2d 528 (Miss. 2000) .

Beauchene confirms that Mississippi law recognizes an implied contractual relationship between a private university and its students. Beauchene v. Mississippi College, 986 F.Supp.2d at 769.

As noted by the Mississippi Supreme Court in the Hughes decision, “the student-university relationship is contractual in nature and the terms of the contract may be derived from a student handbook, catalog, or other statement of university policy.” University of Mississippi Medical Center v. Hughes, 765 So.2d at 535.

The student handbook with procedures applicable to probation for unprofessional conduct, appeals of academic grades, and dismissals for failing grades (which would require more than the one failing grade by Dr. Chard that Mr. Mahaffey was not allowed to effectively appeal) is included in the record in this case (R000633-000657).

The Chancellor did not address whether procedures set out in the handbook or other policy statements by the University were followed in Mr. Mahaffey’s case, although Mr. Mahaffey’s claim for breach of contract turns on whether the University followed the procedures in the handbook and acted in good faith.

Instead, the Chancellor held that William Carey University was not required to follow its handbook in dismissing Mahaffey so long as there was “informal give and take

between the student and the administrative body which dismisses him” (Transcript at 53). This conclusion misinterprets and misapplies the legal standard for judicial review set out in **Beauchene** (for reasons discussed in more detail in Section D below).

Under the legal standard in **Beauchene**, the Forrest County Chancellor should be called upon, after a full trial in this matter, to determine whether William Carey University’s procedures were carried out with “fundamental fairness” and that the decisions rendered were not “arbitrary and capricious.” **Beauchene v. Mississippi College**, 986 F.Supp.2d at 769.

In doing so, **Beauchene** makes it clear that the Chancellor should review “the degree in which [the private university] deviated from its established procedures.” **Id.** The Record here is replete with deviations, with the University changing its position throughout the process on whether the grounds for expulsion were unprofessional conduct or a failing grade and on what procedural protections, for example, a complaint setting out any new charges, notice of a meeting of the P&M Committee on an issue as life-changing as expulsion, and an appeal were required or appropriate.

**D. The legal standard for judicial review of decisions by private educational institutions as explained in the Beauchene case (i) provides for less deference and closer scrutiny if Mr. Mahaffey’s dismissal was based on professionalism rather than academic grounds; (ii) would require that the University follow its standard procedures for review and appeal of Mr. Mahaffey’s failing grade if the dismissal is based on academic grounds; and (iii) does not, in either case, hold that “informal give and take” is sufficient in this situation**

---

The transcript of the oral argument at the hearing on the motion for summary judgment indicates that the Chancellor tended to think of both disciplinary and academic decisions as being within the medical school faculty’s “considerable discretion,” see page 52 of Transcript. His ruling from the bench acknowledges that there is some difference in the standard for review of academic versus unprofessionalism issues (Record Excerpts Tab 3).

While both grounds are subject to judicial review, matters that do not involve academic achievement are subject to lesser deference and closer scrutiny. **Beauchene v. Mississippi College**, 986 F.Supp.2d at 768, citing and quoting **University of Mississippi Medical Center v. Hughes**, 765 So.2d at 534.

The phrase quoted by the Chancellor from **Beauchene** decision concerning “informal give and take between the student and the administrative body which dismisses him” applies in the more deferential context of a dismissal based on academic grounds, which the University here eliminated from its final decision.

In addition, “informal give and take between the student and administrators” is sufficient in **Beauchene** only because the court found that the law student’s accusations that procedures in the student honor code were not followed were not supported by the record. **Beauchene v. Mississippi College**, 986 F.Supp.2d at 771-72.

The Mississippi College situation involved a charge of plagiarism described by the Court as a “form of academic misconduct.” The record confirmed that Professor Matt Steffey met repeatedly with the law student demonstrating to him that “the first 25% of [his] paper . . . [was] taken line-by-line and footnote-by-footnote from a single source.” **Id.** After Beauchene was given the chance to respond several times, he “finally confessed to his wrongdoings” in an e-mail to the law school dean. **Id.**

This is not the type of “informal give and take” that we have in the record in this case, where there is no incident of unprofessional conduct or academic achievement that is not in dispute.

If the University’s reliance on professionalism as the grounds for dismissal is to be honored, the more deferential standard for academic decisions in **Beauchene** should not apply. If the University’s initial reliance on a pattern of past unprofessionalism and failure of

the pediatrics rotation is still to be considered as “mixed” grounds for dismissal, the University should be forced to follow its handbook and policies for appeal of academic issues.

### **CONCLUSION**

Because there is at least one disputed issue of material fact in the record, the trial court’s grant of summary judgment for William Carey University should be reversed.

This cause should be remanded for trial with a clarification by this Court that the Mississippi legal standard for judicial review of decisions by private academic institutions (1) is less deferential for dismissals that are disciplinary rather than academic; (2) in either case, require a consideration of what the University’s handbook and policies provide for all students and the extent to which the institution deviated from those procedures; and (3) require the Chancellor to determine whether the University’s decision was “fundamentally fair” or “arbitrary and capricious” considering the full context, including the explanations of the student and others who support his view of certain incidents.

Steven Jacob Mahaffey respectfully requests that the trial court’s opinion granting summary judgment to William Carey University be REVERSED and that this cause be REMANDED for trial.

Respectfully submitted, this the 5th day of January, 2015.

*s/T.H. Freeland, IV*

T.H. Freeland, IV  
Mississippi Bar No. 5527

*s/Joyce Freeland*

Joyce Freeland  
Mississippi Bar No. 102183

FREELAND & FREELAND, LAWYERS  
1013 Jackson Avenue, P.O. Box 269  
Oxford, Mississippi 38655  
Telephone: (601) 234-3414  
Facsimile: (662) 234-0604  
Email: [joyce@freelandlawfirm.com](mailto:joyce@freelandlawfirm.com)  
ATTORNEYS FOR STEVEN JACOB MAHAFFEY

**CERTIFICATE OF SERVICE**

I, T.H. Freeland, IV, attorney for appellant, Steven Jacob Mahaffey, hereby certify that I have this day served a copy of the above and foregoing by sending a true and complete copy via this Court's MEC system or via United States mail, postage prepaid, to:

The Honorable M. Ronald Doleac  
Forrest County Chancery Court  
P.O. Box 872  
Hattiesburg, MS 39403-0872

Heber Simmons III, Esq.  
Seth Hall, Esq.  
Simmons Law Group, P.A.  
240 Trace Colony Park Drive, Suite 200  
Ridgeland, MS 39157  
[heber@simmonslawgroup.com](mailto:heber@simmonslawgroup.com)  
[seth@simmonslawgroup.com](mailto:seth@simmonslawgroup.com)

Dorrance Aultman, Esq.  
Aultman, Tyner & Ruffin, Ltd.  
P.O. Drawer 750  
Hattiesburg, MS 39403-0750  
  
[da@aultmanlaw.com](mailto:da@aultmanlaw.com)

This the 5th day of January, 2015.

*s/T.H. Freeland, IV*

T.H. Freeland, IV